See *New York Produce Exchange* v. *Baltimore & Ohio R. Co.*, 7 Interst. C. Rep. 612, 658. Thus, the commissioners have no power to declare a rate unreasonable on the ground that the carrier has estopped itself from making a raise by a long-continued lower rate. *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 31 Sup. Ct. 288. If they proceed in a federal court to enforce their order, they are not prejudiced by the fact that the original complainant came before them with unclean hands. *Interstate Commerce Commission* v. *Southern Pacific Co.*, 132 Fed. 829. Nor can the fact that the shipper has been engaged in an unlawful combination bar his right to relief at the hands of the commission. *Tift* v. *Southern R. Co.*, 10 Interst. C. Rep. 548. The act allows the shipper two years in which to file his complaint. U. S. COMP. STAT., SUPP. 1909, 1159. It seems an unwarranted assumption of authority for the commission to shorten the time expressly allowed by the very act which it was created to enforce.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — EFFECT OF JUDGMENT AS JUSTIFICATION FOR ACTS DONE BEFORE ITS REVERSAL. — A decree that the defendant was entitled to a certain amount of the water of a stream was reversed on an appeal by the plaintiff. The undertaking given on appeal did not stay the operation of the decree. After the rendering of the decree and before its reversal the defendant used the amount of water allowed by the decree. *Held*, that the plaintiff cannot recover for damage to his land caused thereby. *Porter* v. *Small*, 120 Pac. 393 (Or.).

It seems to be well settled that no action in tort will lie for acts done in pursuance of an erroneous judgment, subsequently reversed. Where the alleged tort is false imprisonment, no tort is committed, since irregularity in the legal process is an element of the wrong. *Simpson* v. *Hornbeck*, 3 Lans. (N. Y.) 53; *Williams* v. *Smith*, 14 C. B. N. S. 596. In other cases, however, by the reversal the acts done are subsequently proved wrongful; yet the fact that they are done in pursuance of a legal judgment is regarded as a justification. *Loring* v. *Steineman*, 42 Mass. 204; *Thompson* v. *Reasoner*, 122 Ind. 454, 24 N. E. 223. *Cf. Day* v. *Bach*, 87 N. Y. 56. To allow the action would involve the assumption that a valid judgment is not a foundation of rights. *Bridges* v. *McAlister*, 106 Ky. 791, 51 S. W. 603. *Cf. Mark* v. *Hyatt*, 135 N. Y. 306, 31 N. E. 1099. Though this may work a hardship on the defendant, he may protect himself by getting a stay of execution, on giving a proper bond. But it seems also well settled that the defendant must restore any profit he may have made, since it is not equitable for him to keep it. *Lott* v. *Swezey*, 29 Barb. (N. Y.) 87; *Travellers' Ins. Co.* v. *Heath*, 95 Pa. St. 333. In the principal case, however, the question of restitution was not presented.

LEGISLATURES — RIGHT OF SPEAKER TO PREVENT DISORDER BY COMPELLING ATTENDANCE OF MEMBER. — A member of a colonial legislative assembly left the chamber in a disorderly manner. As a necessary measure, to prevent further disorder, the speaker had the sergeant-at-arms bring him back and admonished him. *Held*, that the speaker is liable in an action for false imprisonment. *Perry* v. *Willis*, 11 N. S. W. S. R. 479.

A colonial legislative assembly has no inherent power to punish either a stranger or one of its members for contempt. *Kielley* v. *Carson*, 4 Moore P. C. 63; *Doyle* v. *Falconer*, 4 Moore P. C. N. S. 203. Every legislative assembly, when duly constituted, has the power to compel the attendance of its members. See CUSHING, LAW & PRACTICE OF LEGISLATIVE ASSEMBLIES, 2 ed., § 264. A member who is guilty of disorderly conduct in the assembly may be removed by order of the assembly. See *Doyle* v. *Falconer*, *supra*, 219, 220. It has been held that this power of removal is impliedly delegated to the speaker as necessarily incident to his office as presiding officer. *Toohey*

v. *Melville*, 13 N. S. W. L. R. 132. See *Lucas* v. *Mason*, L. R. 10 Exch. 251, 254. It is not certain that the assembly could compel the attendance of a member to be reprimanded rather than to aid in its legislative functions. But conceding this power in the assembly, it is not such a needful incident to the office of the speaker that it can fairly be said to be delegated to him in the absence of an express authorization. The result reached by the court in the principal case is thus, it seems, correct.

LICENSES — LICENSOR'S LIABILITY TO LICENSEE — AFFIRMATIVE NEGLIGENT ACTS. — The plaintiff, in common with the public, had for many years used a road across the defendant's premises, on which a quarry had gradually been enlarged in the direction of the roadway. The excavation was then rapidly advanced toward and across the road without the plaintiff's knowledge. The plaintiff, while walking on the road at night, fell into the quarry and was injured. *Held*, that he cannot recover. *Fox* v. *Warner-Quinlan Asphalt Co.*, 204 N. Y. 240, 97 N. E. 497.

Continuous use of a private way by members of the public makes them no more than bare licensees. *Stevens* v. *Nichols*, 155 Mass. 472, 29 N. E. 1150. *Cf. Hounsell* v. *Smyth*, 7 C. B. N. S. 731. *Contra, Hanson* v. *Spokane, etc. Water Co.*, 58 Wash. 6, 107 Pac. 863. The landowner owes to licensees no duty to make the premises safe. *Gautret* v. *Egerton*, L. R. 2 C. P. 371. It has been held that he is liable to them only for wilful injury. *Illinois Central R. Co.* v. *Godfrey*, 71 Ill. 500; *Dixon* v. *Swift*, 98 Me. 207, 56 Atl. 761. Since, however, the presence of licensees is foreseeable, most courts hold that property-owners must refrain from acts likely to injure them. *Corrigan* v. *Union Sugar Refinery*, 98 Mass. 577; *Felton* v. *Aubrey*, 74 Fed. 350. A distinction has been made between directly bringing force to bear against licensees and altering the condition of the premises without taking proper precautions, which has been held a mere omission. *Nicholson* v. *Erie Ry. Co.*, 41 N. Y. 525. See *Byrne* v. *New York, etc. R. Co.*, 104 N. Y. 362, 366, 10 N. E. 539, 540. Alteration, however, is certainly affirmative action, and if calculated to injure licensees, is negligence towards them. *Corby* v. *Hill*, 4 C. B. N. S. 556; *Rooney* v. *Woolworth*, 78 Conn. 167, 61 Atl. 366. The landowner, however, may properly assume that they will foresee the gradual changes likely to be made in the ordinary course of business. *M'Cann* v. *Thilemann*, 36 N. Y. Misc. 145, 72 N. Y. Supp. 1076. Where, however, the alteration, as in the principal case, is made suddenly and without warning, it would seem that the defendant should be liable. *Cf. Carskaddon* v. *Mills*, 5 Ind. App. 22, 31 N. E. 559.

MANDAMUS — PARTIES — RIGHT OF PRIVATE CITIZEN TO COMPEL ISSUANCE OF WARRANT FOR ARREST. — The petitioner, a private individual, sought by *mandamus* proceedings to compel a justice of the peace to issue a warrant for arrest on a criminal charge of baseball playing on Sunday. *Held*, that he is not a proper relator. *Nichelson* v. *State ex rel. Blitch*, 57 So. 194 (Fla.).

By the weight of authority any member of the public may institute proceedings in *mandamus* on a matter of public interest without showing any special interest in himself. *People ex rel. Case* v. *Collins*, 19 Wend. (N. Y.) 56; *State ex rel. Ferry* v. *Williams*, 41 N. J. L. 332. The principal case denies the plaintiff the right on the ground that the matter in question is of interest only to the state as sovereign. There is, doubtless, a distinction between matters of interest to the government as such and those of interest to the public. See *Berube* v. *Wheeler*, 128 Mich. 32, 35, 87 N. W. 50, 51. But it is submitted that the public is interested in this particular matter. The authorities recognize such an interest in a private citizen to force a magistrate to act in his proper district. *State ex rel. Ferguson* v. *Shropshire*, 4 Neb. 411. So also the public is interested in the enforcement of the liquor laws. *State ex rel. Ferry* v. *Williams, supra.*